

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

IN THE MATTER OF:

Joseph G. Goldade
Licensee of Larry's Bar
License No. AA-01611
Located at Selz
Pierce County, North Dakota

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**RECOMMENDED
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

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The licensee was served with a Complaint and Specification of Issues, and Notice of Hearing, as required by N.D.C.C. ch. 5-02. This administrative matter was heard on October 9, 2001, at the hour of 1:00 p.m., at the Pierce County Courthouse, Rugby, North Dakota, before Allen C. Hoberg, designated administrative law judge (ALJ), Office of Administrative Hearings. The licensee, Joseph G. Goldade, was present with counsel, attorney Michael S. McIntee, Towner. The manager of the licensed establishment, Larry Goldade, was also present at the hearing. Robert P. Bennett, assistant attorney general, represented the State. Three witnesses testified at the hearing, two law enforcement officers, Pierce County Sheriff Robert T. Graber and Bureau of Criminal Investigation Special Agent Craig Bauer, and the licensee. Larry Goldade was not called as a witness; neither was the minor to whom alcoholic beverages were allegedly dispensed at Larry's Bar. Larry Goldade has a criminal matter related to this administrative matter pending in the District Court for Pierce County.

At the hearing the State offered three exhibits (1-3), all of which were admitted without objection. Exhibit list attached. At the hearing counsel also stipulated to certain evidence in lieu of having that evidence marked and admitted. They stipulated that a light brown paper bag inside a

plastic grocery bag contained twelve (12) individual cans of Bud Light beer. The cans were not in any kind of package or container. They were loose. They also stipulated that this paper bag was the same paper bag received by law enforcement officers from a minor on June 22, 2001, after he left the licensed establishment, Larry's Bar.

At the conclusion of the evidentiary portion of the hearing, counsel gave closing oral argument.

Upon the evidence presented at the hearing and the argument of counsel, the ALJ makes the following recommended findings of fact and conclusions of law:

FINDINGS OF FACT

On June 22, 2001, Joseph G. Goldade was the holder of a state alcoholic beverage license permitting the sale of alcoholic beverages at retail from the premises of Larry's Bar in Selz, Pierce County, North Dakota. Joseph's son, Larry Goldade, is the manager of Larry's Bar. The manager is a salaried employee of the licensee. Only Joseph and Larry regularly work at the bar, dispensing alcoholic beverages. On some occasions another employee works at Larry's Bar, but on June 22, 2001, only Joseph or Larry, or both, were working at the Larry's Bar; no other employee was working.

On June 22, 2001, the licensee, or an agent or employee of the licensee, dispensed alcoholic beverages from Larry's Bar to a person under twenty-one years of age (a minor - designated a "confidential informant" on exhibit 3) and permitted that same person to remain on the licensed premises of Larry's Bar while alcoholic beverages were being sold or displayed.

COMMENTARY ON FINDINGS OF FACT

This administrative action results from coordinated sting operations in Pierce County on June 22, 2001, involving four (4) alcoholic beverage establishments, including Larry's Bar. All four operations involved a minor entering a licensed establishment in an attempt to purchase alcoholic beverages. The procedures for each of the sting operations were essentially the same. As a result of the sting operation involving Larry's Bar, law enforcement in Pierce County has asked the Attorney General to take administrative action against the license of Larry's Bar.

The evidence from the sting operation at Larry's Bar shows that a minor, who was 19 years old (a month from being 20 at the time of the incident) entered Larry's Bar on the night of June 22, 2001, without alcoholic beverages. *See* picture of minor, exhibit 1. He came out of Larry's Bar that night, about two minutes later, with 12 cold cans of Bud Light beer in a paper bag. The cans of beer were not in a 12-pack cardboard box or container and were not in any type of six-pack container. They were loose in the paper bag. This is the same sack of twelve cans of the stipulation.

At the hearing, Joseph Goldade at first testified that he did not work on June 22, 2001, but later testified that he did not remember whether he worked on June 22. After looking at the picture of the minor in question, he denied dispensing alcoholic beverages to the minor. Larry Goldade did not testify at the hearing. The minor did not testify either, so he could not identify the person who dispensed alcoholic beverages to him, assuming that person was, indeed, in the hearing room on October 9.

Nevertheless, there is considerable evidence indicating a dispensing of alcoholic beverages by the manager, Larry Goldade, an employee and agent of the licensee, or by the licensee, on the night in question; in fact, there is a preponderance of the evidence. However,

even if the evidence did not show, by the greater weight of the evidence, a dispensing of alcoholic beverages to a minor on June 22, 2001, a minor was allowed to stay on the licensed premises that night by the licensee or the licensee's manager, was not asked to show an identification by the licensee or the licensee's manager, and remained on the licensed premises until he was able to obtain 12 cans of cold Bud Light beer from someone on the licensed premises who obtained the alcoholic beverages somewhere on the licensed premises. The minor certainly did not obtain the cold beer in the brown paper bag off of the licensed premises, whether the alcoholic beverages were from the stock of Larry's Bar or not.

Under N.D.C.C. § 5-02-06 Joseph Goldade is in violation of § 5-02-06 either when he or an agent or employee actually dispenses alcoholic beverages to a minor, or when he or an agent or employee allows a minor to remain on the licensed premises while alcoholic beverages are being sold or displayed, or both. Accordingly, even if the evidence did not show a dispensing by the licensee or an agent or employee of the licensee to a minor on June 22, 2001, the licensee will have still violated § 5-02-06, if the licensee or an agent or employee of the licensee allows a minor to remain on the licensed premises while alcoholic beverages are being sold or displayed, does not ask the minor to leave the premises or does not ask the minor for identification, and then does not ask him to leave if he can not produce identification. At the very least, the licensee or an agent or employee of the licensee allowed a minor to remain on the premises of Larry's Bar on June 22, 2001, while alcoholic beverages were being sold or displayed, until he was able to obtain 12 cans of cold Bud Light beer from someone, somewhere on the licensed premises.

In fact, however, the evidence shows a great deal about a broader violation of N.D.C.C. § 5-02-06, both dispensing and allowing a minor to remain on the premises, notwithstanding the lack of eyewitness identification of the dispenser. Law enforcement taped the incident which

included an exchange between the minor and a person in Larry's Bar, using electronic devices that allowed law enforcement to listen to what was occurring while the words and noises of the incident at Larry's Bar were being recorded. Exhibit 2 is the tape, which the ALJ has listened to several times. Exhibit 3 is a transcription of the tape. The ALJ has also read the transcription several times. The transcription is an accurate transcription of the words spoken on the tape by people inside of Larry's Bar on June 22.

The tape and transcription show, then, that a minor enters a rather noisy Larry's Bar on the night of Friday June 22. He asks someone shortly upon entering the building, "[h]ow ya doing? Could I get a twelve pack of Bud Light, please?" Someone (a male voice) says, "[h]uh?" The minor again says, "[c]ould I get a twelve pack of Bud Light, please?" The same someone responds, "[b]ottles or cans?" The minor says, "[u]h, cans, please." After about one minute and 15 seconds someone returns and hands the minor 12 loose, cold cans of Bud Light beer in a brown paper bag. The same someone that responded to the minor before says, "[t]hank you." The minor says, "[t]hanks a lot. Have a good night." Then, a female person says, "[b]e careful." The minor says, "[y]es, thank you," and leaves. All of the above quotes in this paragraph are from exhibit 3 and can also be heard on exhibit 2.

During the time the minor is in the bar, no one asks him his age; no one asks him to produce identification, no one asks him to leave the premises. The only other conversation recorded by the electronic device on the minor, during the time the minor is in Larry's Bar, is a somewhat inaudible conversation between an unidentified female (perhaps the same one that said to the minor, "[b]e careful," just before he left) and the minor, while the minor is waiting for that someone to obtain the requested beer. The unidentified female did most of the talking but she was apparently some distance from the minor.

The evidence shows that there are two places one could obtain beer from Larry's Bar, from Larry's Bar's stock, for sale to a patron who entered the premises to purchase beer off-sale. Beer is located in a cooler right at the front counter and beer is located in another cooler at the east end of the bar, some distance from the front counter. It is certainly possible that on June 22, someone went to one of Larry's Bar's coolers, either the one in the front or the one at the east end of the bar, to retrieve 12 cold loose cans of Bud Light and place them in a paper bag, and then returned to dispense the Beer to the minor, and this took about 1 minute and 15 seconds to accomplish. In fact, it is likely that is the way it happened. (The ALJ timed the elapse of time between when the minor said, “[u]h, can, please,” and someone said “[t]hank you.”)

Joseph Goldade testified at the hearing that he did not recognize the sack that the twelve cans of beer were in. He apparently thought that it could not have been a sack belonging to Larry's Bar. Those sacks were darker and of a heavier consistency, he testified. However, the evidence is clear that the minor entered Larry's Bar without a sack and came out of Larry's Bar with the sack that he obtained in Larry's Bar, and the sack contained 12 cold cans of Bud Light beer that he obtained inside Larry's Bar. This was the same light brown sack that the parties stipulated to as evidence at the hearing. Part of the stipulation was that the light brown paper bag containing 12 cans of Bud Light beer was the same brown paper bag that law enforcement received from the minor at a rendezvous shortly after he left the premises of Larry's Bar, after having obtained the beer at Larry's Bar.

Joseph Goldade also testified that 12 cans or a twelve pack of Bud Light beer has for some time been sold at Larry's Bar for \$11.00. He said that he always charges \$11.00 for 12 cans of Bud Light beer. The evidence shows that the minor paid \$9.00 for the beer. However, again, Larry Goldade, the manager, did not testify. It is possible that he sold the minor 12 cans

of Bud Light Beer for \$9.00. It is also possible that Joseph Goldade is mistaken as to the price of 12 cans of Bud Light on June 22, 2001, or that there was a mistake made in the sales price by the dispenser that night.

Joseph Goldade's position about what actually happened at Larry's Bar on the night of June 22, 2001, regarding the minor is not entirely clear. Joseph says that he did not find out about the incident at Larry's Bar on June 22 until he got the Attorney General's complaint. However, his position now is, apparently, that either a 12 pack of Bud Light was stolen from a Larry's Bar cooler by a patron or someone else who was in the bar at the same time as the minor and, then, the person who stole the cold beer from a Larry's Bar cooler sold it to the minor in a different colored paper bag than the type of bag Larry's Bar normally uses, for a price lower than what Larry's Bar normally charges, or that a patron or someone else who was in the bar at the same time as the minor acted as an employee or agent of the licensee and dispensed the cold beer from Larry's Bar's stock to the minor in a different colored paper bag than what Larry's Bar normally uses, for a price lower than what Larry's normally charges, or that a patron or someone else who was in the bar at the same time as the minor sold the minor 12 cold cans of Bud Light that they just happened to have, perhaps from an earlier purchase at Larry's Bar or perhaps not even from Larry's Bar stock, which beer was located somewhere else in the bar (because it took 1 minute and 15 seconds to retrieve it), without the knowledge of the licensee, or the manager.

Further, Joseph Goldade testified that only he and Larry would have had the authority to dispense alcoholic beverages from Larry's Bar on June 22. But, Joseph also testified that a patron could sell some of their own beer or some of Larry's Bar's beer at Larry's Bar on a busy night and neither the licensee nor the manager would know it. None of the possible scenarios related by Joseph, and indicated by counsel as possible, is believable, in light of the facts that are

known in this matter, and the ALJ believes none of their scenarios. Some of what Joseph said at the hearing is not credible. He seemed unsure of himself at the hearing, too, and he also changed his story in regard to some of his testimony.

The ALJ believes that Larry, and if not Larry, then Joseph, on June 22, 2001, dispensed the alcoholic beverages that are the subject of this hearing to a minor from beer in stock at Larry's Bar and allowed that minor to remain on the licensed premises while alcoholic beverages were being sold or displayed, without asking him to leave, without asking him his age, and without asking him for identification.

From the foregoing findings of fact, the ALJ arrives at the following:

CONCLUSIONS OF LAW

Joseph Goldade is presently a licensed retailer of alcoholic beverages, operating under and by virtue of a state license to sell alcoholic beverages at retail, the license having been issued by the Attorney General pursuant to the provisions of N.D.C.C. ch. 5-02.

The evidence presented at the hearing shows, by the greater weight of the evidence, that Joseph Goldade, or an agent or employee of Joseph Goldade, dispensed alcoholic beverages to a person under twenty-one (21) years of age and permitted that same person to remain on the licensed premises while alcoholic beverages were being sold or displayed, in violation of N.D.C.C. § 5-02-06

The Attorney General has the authority, by virtue of N.D.C.C. § 5-02-11, to suspend or revoke the licensee's license to sell alcoholic beverages at retail when the violation charged in the Affidavit of Complaint has been proved by the evidence presented at the hearing.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, the state retail alcoholic beverage license of Joseph Goldade shall be suspended for a period of five business days, but only one business day of the suspension shall be invoked at the present time, and the actual business day of closing shall be determined by the Attorney General in his final Order.

Dated at Bismarck, North Dakota this 17th day of October, 2001.

State of North Dakota
Wayne Stenehjem
Attorney General

By: _____
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